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Supreme Court, U.S.
FILED
APR 21 1999
OFFICE OF THE CLERK

No. 98-1571

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

INGRAM BARGE COMPANY and
INGRAM OHIO BARGE COMPANY,

Petitioners,

v.

CLAIMANTS' STEERING COMMITTEE,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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THE QUESTION ACTUALLY PRESENTED FOR REVIEW

The Claimants' Steering Committee[1] respectfully suggests that the real question presented on review, despite Petitioners' suggestions regarding what they characterize as a "split" between the Fifth and Ninth Circuit Courts of Appeal and threats of the depletion of its own shipowner's insurance, is simply whether the clear language of the Shipowners' Limitation of Liability Act prohibits extension of stay orders in limitation of liability cases to the crew members of the vessel whose owner is seeking exoneration from or limitation of its liability. Respondent suggests that United States District Judge John V. Parker and the United States Court of Appeals for the Fifth Circuit both correctly understood this prohibition and ruled correctly in the case below that Petitioners' vessel crew member employees were not entitled to have the stay in limitation extended to include separate, non-limitation lawsuits against those employees.

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1. The Claimants' Steering Committee is a group of lawyers appointed by United States District Judge John V. Parker to manage the litigation on the behalf of all persons who have filed claims and answers into the limitation proceeding arising from the March 17, 1997 allision of Ingram Barge Company's vessel, M/V F.R. Bigelow, with the U.S. Highway 190 Bridge at Baton Rouge, Louisiana.

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SUMMARY OF THE ARGUMENT

Ingram Barge Company's and Ingram Ohio Barge Company's (collectively "Ingram") Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit should be denied. On September 19, 1997, when the real, underlying issue was first addressed by United States District Judge John V. Parker of the Middle District of Louisiana, His Honor correctly concluded:

> Having had an opportunity to actually look at the law, I am convinced that the stay order cannot be extended to anybody except a ship owner, and the *Zapata* case is one of many that holds to that effect.

The Limitation of Shipowners' Liability Act[2] ("the Act") is inapplicable to vessel crew members named as defendants in collateral proceedings.

REASONS FOR DENYING THE WRIT

The real issue presented is whether a federal district court has the power to extend a stay order beyond the clear limits of the Act. The Act, as well as established jurisprudence, explicitly deprives federal district courts of the power to expand stays to include vessel crew members.

Judge John Minor Wisdom, speaking for the Fifth Circuit in *Zapata Haynie Corp. v. Arthur*, 926 F.2d 484 (5th Cir. 1991) made it abundantly clear that the stay provisions of the Act apply solely to stays of suits against shipowners. The Supplemental Rules for Certain Admiralty and Maritime

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2. 46 U.S.C. § 181, *et seq.*

Claims, Rule F, which permits enjoining proceedings against the owner, makes no reference to enjoining proceedings against any other parties.[3]

The following passages from *Zapata* provide clear guidance regarding the issue at bar;

- The Act provides for stays of litigation against ship owners, not masters; therefore we find that a stay of litigation against the master is not within the scope of the Act.

Zapata at page 486.

- Furthermore, section 187 plainly states that the provisions of the Act pertaining to stays of proceedings against the owner (§§ 182, 183, 184, 185 & 186) are not to be construed to affect the remedy to which any party may be entitled against the master.

Zapata at page 486.

- The various provisions of the Act are not ambiguous, nor are they in conflict with one another: The Act requires stays of proceedings against ship owners; it does not permit stays of proceedings against masters.

Zapata at page 486.

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3. *See Zapata*, at pages 485 and 486.

> • . . . this Court cannot interpret § 187, to allow results that we believe Congress would wish; we must interpret the language that Congress actually wrote.

Zapata at page 486.

Ingram's petition represents, for a third time in this litigation, a request for an impermissible judicial expansion of the Act. If Congress had desired to extend the stay provisions of the Act, it could have. Congress has not and our judiciary cannot expand the stay provisions beyond that clearly defined limit.

During proceedings before Judge Parker, Ingram cited several cases for the proposition that a limitation stay can be extended to foreclose the prosecution of actions against the vessel's crew or insurers pending the outcome of the limitation proceeding. However, those cases[4] were all decided before the Fifth Circuit's 1991 opinion by Judge Wisdom[5] in *Zapata*.

Zapata is unequivocal in its declaration that the unambiguous language of § 187 and Supplemental Rules for

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4. Ingram cited the following cases in support of this proposition: *Maryland Cas. Co. v. Cushing*, 74 S. Ct. 608 (1954); *Complaint of Paradise Holdings, Inc.*, 795 F.2d 756 (9th Cir. 1986); *Guillot v. Cenac Towing, Inc.*, 366 F.2d 898 (5th Cir. 1966), and *In re: Spanier Marine Corp.*, 1983 A.M.C. 2441 (E.D. La. 1983).

5. Judge John Minor Wisdom is universally recognized as one of this country's preeminent admiralty jurists. In fact, the Fifth Circuit courthouse is named in his honor. Volume 888 of the F.2d series, at pages C-CII, contains a *vita* on Judge John Wisdom which notes that he has written landmark opinions in the field of admiralty law.

Certain Admiralty and Maritime Claims, Rule F, permit enjoining ship owners *only* and "makes no reference to enjoining proceedings against any other parties." In so declaring, the Fifth Circuit specifically addressed the cases now relied upon by Ingram, and either rejected or distinguished those holdings.

Ingram also argued below that *Zapata* was, somehow, limited to the specific facts of that case. However, there is nothing in the language of *Zapata* that indicates the Fifth Circuit intended to limit its holding. This is evident in the Fifth Circuit's broad discussion of the plain wording of § 187 and its efforts to reconcile certain past cases as consistent with the clear wording of the statute and its rejection of other cases as inconsistent.[6]

Below, Ingram has twice contended that *Zapata* was in "obvious conflict" with *Guillot v. Cenac Towing, Inc.*, 366 F.2d 898 (5th Cir. 1966). *Guillot* involved the determination of whether officers (*i.e.*, businessmen) of a corporate shipowner qualified as "officers" (*i.e.*, vessel masters and officers) under § 187, which expressly provides that limitation of liability shall not be construed to affect remedies against "masters, officers, or seaman."[7] The Fifth Circuit, in *Guillot*, found that the term "officers" in § 187 applied to "officers who are a part of the crew of the offending vessel, not

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6. Most important here is the Fifth Circuit's rejection of the holding in the Ninth Circuit's case, *In re: Complaint of Paradise Holdings, Inc.*, 795 F.2d 756 (9th Cir. 1986). *See* discussion, *infra*. This is the same case Ingram relies upon in connection with this writ petition.

7. 46 U.S.C. § 187.

executive officers of the corporate shipowner."[8] The concern in *Guillot* was that the admiralty court had exclusive jurisdiction to "determine whether the actions of the officers would be such that the shipowner could be charged with privity and knowledge of those actions."[9] The court's concern arose from a situation in which the parties involved, the corporate shipowner and the corporate officers behind the corporation, were, in a sense, unseverable. The Fifth Circuit correctly noted that these facts were inapposite to those in *Zapata*, which involved the lifting of a stay against the master of the vessel, a position that is expressly excluded by § 187 from limitation of liability. Likewise, in connection with this writ petition, there is no issue of corporate identify meriting an expansive reading of § 187.

Ingram cites the Supreme Court's decision in *Maryland Cas. Co. v. Cushing*, 347 U.S. 409, 74 S. Ct. 608 (1954) as authority for the proposition that stay orders can be extended to include vessel masters and officers. In *Cushing*, this Court extended a stay in proceedings against the vessel's insurer. At issue was Louisiana's direct action statute, which would have allowed separate proceedings directly against the insurer. The Court found that a separate suit against the insurer would "impair the owner's and charterer's right to indemnification for the amount of damages awarded against them."[10] In such a case, an owner might be unable to defend a challenge to its limitation of liability on the grounds that the mishap occurred without its "privity or knowledge".[11]

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8. *Guillot*, at 906.

9. *Zapata*, at 486.

10. *Cushing*, at 608.

11. *Cushing*, at 614.

The facts here do not give rise to the concerns present in *Guillot* and *Cushing*. Ingram and its crew are separate parties; they are not "identified" with each other. Although corporate officers and a shipowner's insurer are technically "non-owners", their interests are bound with those of the shipowner and their involvement in the suit stems from their relationship with the shipowner. They would not be named in suits if it were not for this involvement. Ingram's crew members, however, were not named defendants because of their relationship to the shipowner but because of their own independent acts of negligence.[12]

Below, but not before this Court, Ingram cited only one post-*Zapata* case in support of its position, and that case reaffirms the mandate that exceptions to a strict reading of § 187 have been allowed only in cases where the interests of the shipowner and the non-owner are intrinsically bound together. *In re: Waterman Steamship Corp.*, 1993 A.M.C. 1501 (E.D. La. 1992). *Waterman Steamship* involved a motion by a manufacturer to stay a state action against it. The manufacturer sought to cross-claim against the shipowner; the state actions against the shipowner were stayed because of a federal limitation proceeding. The court denied the motion, stating that while proceedings against IMO [the manufacturer] "would indirectly involve some of the same issues as those in the limitation proceeding," the action in state court would not "affect the availability of insurance monies, nor determine whether Waterman's [the shipowner's] liability should be limited."[13] Significantly, in finding the

12. The Fifth Circuit implicitly recognized that the interests of the shipowner and the master were likewise separate. This is seen in its reconciliation of the facts of *Guillot*.

13. 1993 A.M.C. at 1505. In its discussion, the Fifth Circuit reviewed prior cases concerning exceptions to a strict reading of (Cont'd)

action against the manufacturer too "remote" to justify crossing the line between federal limitation and savings to suitors rights,"[14] the court went on to note that

> [t]he Limitation Act is very specific about applying to "owners" and the court-created exceptions are extremely narrow and have been created for situations in which the ship owner is directly affected. . . . *Even state actions against an operator and manager of a ship in limitation have been found to be too remote to justify an injunction against them.*[15]

It logically follows that collateral state court actions against a pilot or crew member of a vessel whose owner seeks limitation are also too remote to justify any injunction. This is particularly true where the crew members are independently negligent. Here, Ingram's interests are not "directly affected", although there may be, as in any case where multiple defendants are present, some of the same issues in the different actions. Because the action against the pilot and crew is "distinct and separate" from the limitation proceeding, Judge Parker and the Fifth Circuit each correctly held that a federal district court cannot stay the state court proceedings.[16]

(Cont'd)
§ 187; however it should be noted that the cases named in *Waterman* are all pre-*Zapata* cases such as *Guillot*.

14. 1993 A.M.C. at 1505.

15. 1993 A.M.C. at 1505, citing *In the matter of the Complaint of Amoco Transport Co.*, 1979 A.M.C. 1017 (N.D. Ill. 1979) (emphasis added).

16. 1993 A.M.C. at 1505.

In re: Waterman stressed the balancing of the "competing goals of preserving the state forum for a jury to adjudicate the claim and the federal policy of limiting owner liability."[17] It denied the manufacturer's motion on the basis that both goals could be satisfied by denying an extension of the stay to the manufacturer.

Ingram cites *In re: Complaint of Paradise Holdings, Inc.*, 795 F.2d 756 (9th Cir. 1986) in an effort to create a "fissure" between the Fifth and Ninth Circuit Courts of Appeal. That 1986 case held that allowing state court litigation against a vessel's captain to precede the limitation trial would result in the risk that the shipowner would be denied its insurance coverage, as the state court decision could have some preclusive effects on the issues of the shipowner's knowledge and privity in the limitation proceeding. In 1991, in *Zapata*, the Fifth Circuit in Judge Wisdom's opinion directly addressed *Paradise Holdings* and *explicitly rejected* it:

> Although the Court of Appeals for the Ninth Circuit may be right in finding that the purposes of the Act are inconsistent with the remedies reserved by § 187, it is not within the province of this Court to reconcile any such inconsistencies when the language of the Act is plain, as in this case. The Act provides for stays of litigation against the ship *owners*, not masters; therefore, we find that a stay of litigation against the master is not within the scope of the Act.[18]

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17. 1993 A.M.C. at 1505.

18. *Zapata*, at 486.

Zapata was adamant in its position that any change to the plain words of the Act should come from Congress, and not from the Court's own interpretation.[19] Since pilots and crewmembers are not shipowners, they do not fall within the plain meaning of § 187. The Fifth Circuit made it clear that a stay could not be maintained against a party excluded from limitation of liability under this section. The policy of construing narrowly the application of limitation of liability was an overriding concern for the Fifth Circuit, and thus Ingram's contention that the United States Supreme Court should adopt the ruling of the Ninth Circuit would result in an aberration from policies embodied in § 187.

One final point: Congress made it clear in § 187 that certain parties should be excluded from limitation of liability. Owners, masters, and seamen are all excluded from the scope of the Act.[20] The modern origin of limitation of liability become a feature of the English Admiralty Law in 1734. Our Act passed in 1851, after American shipowners petitioned Congress for limitation of liability legislation similar to that enacted in England. The Act passed with no debate in the House and less than a day's debate in the Senate. (*See* Gilmore & Black, *The Law of Admiralty*, 2d ed. 1975, p. 819). Legal commentators have expressed doubt about the continuing rationale for the limitation of liability statute. Dissenting with three others in *Maryland Cas. Co. v. Cushing*, 347 U.S. 409, 74 S. Ct. 608, 98 L. Ed. 806 (1954), Justice Hugo Black observed:

> . . . Many of the conditions in the shipping industry which induced the 1851 Congress to pass the Act no longer prevail.

(*Cushing*, 98 L. Ed. at 826).

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19. *Zapata*, at 487.

20. 46 U.S.C. § 187.

Limitation of liability was established before the advent of the corporation, to protect shipowners from liability after the destruction or loss of a vessel. Now that the corporate device has been widely accepted, and insurance to protect from loss is readily available, the need for limitation is questionable as it shows increasing signs of obsolescence.[21] The narrow scope of the Act is proof that Congress intended it to apply to Shipowners only, as it did in the last century.

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21. *See* Frank L. Maraist, *Admiralty in a Nutshell*, at pages 304-306. Also see Gilmore & Black, *The Law of Admiralty* (2d ed. 1975), at page 822.

CONCLUSION

Because the pilot and other crew members in question are not the shipowner nor parties whose interests are "directly affected" by the shipowner, there is no reason to extend the outdated — but still clearly limited — protection afforded by the Act to these parties. For this reason, and for the others set forth above, Ingram's petition for a writ of certiorari should be summarily denied.

Respectfully submitted,

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